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QUESTIONS and ANSWERS

ON

INSURANCE

Prepared with Reference to May, Elliott, and Selected Cases.

BY

E. RICHARD SHIPP, LL. M.

(*Of the District of Columbia Bar.*)

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QUESTIONS AND ANSWERS
—ON—
INSURANCE

1. What is Insurance?

A contract whereby, for an agreed premium, one party undertakes to indemnify the other against loss on a specified subject by specific perils (Bouvier). A contract whereby one, for a consideration, undertakes to compensate another if he shall suffer loss (May on Insurance). In the most general sense, Insurance is a contract, for a consideration, to pay a sum of money upon the happening of a contemplated event. This may be an event which is certain to happen, such as death, or a mere possibility, such as fire or disaster at sea (Elliott on Insurance, Sec. 6).

2. What is the oldest form of insurance?

Marine insurance, or that which protects against the dangers of the sea.

3. Outside of life insurance, how may contracts of insurance be defined?

Contracts where for a stipulated consideration one party undertakes to *indemnify* the other against loss

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or damage on a specified subject-matter by specified perils.

4. What is life insurance?

A contract whereby the insurer, in consideration of a certain sum, paid in gross or in annual payments, agrees to pay the person in whose favor the insurance is made a certain sum of money or an annuity in the event of the death of the person whose life is insured (Elliott, Sec. 7).

5. What is accident insurance?

A contract by which, for a consideration, the insurer undertakes either to indemnify the insured against personal injury resulting from accidents, or to pay the beneficiary a certain sum in case of the death of the insured by accident.

6. What is guaranty and fidelity insurance?

A contract of indemnity against loss resulting from want of fidelity in employees, insolvency of debtors, personal injury to others resulting from the negligence of employees, etc., etc.

7. What is casualty insurance?

In a special sense, a contract of indemnity against accidental injuries to property, such as plate glass. In a wider sense, it also excludes accident insurance, as defined above.

8. What is endowment insurance?

A contract to pay a certain sum to the insured if

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he lives for a specified period, or, in case of his death within that time, to a designated third person.

9. Is insurance a wagering contract?

Yes, but is valid in consideration of the general welfare contrary to the general rule as to wagering contracts.

10. Name some classes of contracts that are void as opposed to public policy.

Such as are in restraint of trade or tend to discourage marriage.

11. What is reinsurance?

A contract by which the insurer becomes himself insured against possible liability on his contract with the party originally insured.

12. What is required as to the parties to a contract of insurance?

That they be of full age, sound mind, and under no legal disability.

13. By whom is the business of insuring generally carried on?

By corporations organized for that purpose under laws regulating their creation and control, though it may be so conducted by individuals, as was formerly the universal practice.

14. In the United States, is insurance under the control of the Federal or the State governments?

Of the State governments, since the business of insurance is not commerce. Thus, for example, a

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State, may prescribe the terms under which foreign insurance corporations may conduct their business within its borders, and may even exclude them entirely.

15. How are mutual benevolent associations regarded?

Where formed under special statutes, they are not governed by the general laws relating to the insurance business.

16. What is meant when it is said that a contract of insurance is personal?

That it protects the person insured and not the thing in which he is interested. Unless expressly so stipulated, it will not pass with the title to the property. On the other hand, the insured, in order to recover, must have the property at the time of the loss.

17. What is meant when it is said that insurance, outside of life insurance, is a contract of indemnity?

That its object, in case of loss, is to place the insured as nearly as possible within the terms of the contract, in the same position as before the loss.

18. When the insurer pays the amount of the loss to the insured under a fire or marine insurance contract, is he subrogated to the insured's rights against a third party, causing the loss?

Yes, this right of subrogation arising from the

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nature of the contract as one of indemnity, and not from any relation of contract or privity between the insurer and the insured.

19. What form is requisite to a valid contract of insurance?

In the absence of statutory provision, no particular form is necessary, so that it may be even by parol. But in view of the prevailing custom of using written policies, the want of such policy and of any premium paid, affords a strong presumption that no contract has been made.

20. Of what effect is an oral contract of insuraunce under statutes prescribing a standard form?

It is nevertheless binding, if satisfactorily proven, but is presumed to contemplate insurance subject to the terms and conditions of such standard policy. But it has been held that where an insurance company's charter requires the contracts to be in writing, it cannot make a contract of insurance orally.

21. What effect has a statute requiring insurance policies to bear a revenue stamp, upon those not so stamped?

It is generally held that the validity of the contract itself is not thereby affected, and that the laws of Congress relating to the admission of unstamped instruments in evidence are applicable only to the Federal courts.

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22. Distinguish between valued and open policies.

A valued policy is one in which the amount to be paid as indemnity in case of loss is fixed in advance; an open policy is one to which such amount is left to be ascertained in case of loss.

23. When is a contract of insurance complete?

When the terms are agreed upon between the parties thereto, and without reference to the execution and delivery of the policy unless otherwise provided by the terms of the agreement or by statute. But want of payment of the premium and of delivery of the policy affords *prima facie* proof of an incomplete contract. (Taylor v. Merchants Ins. Co., U. S.)

24. May an insurance policy be conditionally delivered?

It may, the rule against conditional delivery of deeds not applying to insurance policies. But possession of the policy by the insured makes out a *prima facie* case in his favor.

25. Where a contract of insurance is made by mail, when is it complete?

When the offer has been made and the acceptance mailed within a reasonable time. (Taylor v. Merchants Ins. Co., U. S.)

26. What is the subject-matter of an insurance contract?

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The life or property in which the interest of the beneficiary exists, or, more strictly speaking, the interest of the beneficiary in such life or property.

27. What is the requirement as to an insurable interest on the part of the beneficiary?

That he must have such an interest in the property covered by the policy, and this upon the ground that contracts of insurance are for indemnity, not for profit. Life insurance is more or less affected by this principle, although generally held not to be a contract of indemnity, but of protection and even, in many cases, of profit.

28. What is an insurable interest?

Such an interest in property or in relation thereto that a contemplated damage to the same may work directly to the detriment of the person having such interest. It may embrace rights in expectation, such as profits.

29. What is the requirement as to the time of the existence of the interest?

It must exist at the time of the loss, and not, it seems, necessarily at time of the contract, though formerly so held. The reverse seems to be generally true, however, as to life insurance.

30. Must the existence of the interest be continuous?

It seems not, unless so provided in the contract,

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so that an interest, once suspended but reviving before the loss, is recoverable on.

31. What is required as to the legality of the interest?

It must be neither illegal or immoral. It may be either legal or equitable, but neither a legal nor an equitable title to the property in question is requisite. Thus, a railroad company has an insurable interest in property of other parties along its route, for damage to which (as, by fire from its engines) it would be liable.

32. What must be the nature of the insurable interest, in the case of life insurance?

It must be either pecuniary, or that arising from personal relationship between the parties, either of blood or affinity.

33. What is the rule as to the amount to which a creditor may insure his debtor's life?

It must not be grossly disproportionate to the amount of the debt.

34. Of what importance is the form of a life insurance policy, in determining the validity of the contract?

The mere form or recitals of the policy will not establish the validity of the contract, it being essential that the contract be made *bona fide*, and not for speculation on a life in which the party has no insurable interest. Thns, it may be shown that the

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first premium has been paid by the beneficiary, who has no insurable interest, though the contract itself recites that the insured paid the premium.

35. What exception to the general rule that the beneficiary must have an insurable interest in the life of the insured?

This is held not to be necessary where the insured himself, and not the beneficiary makes the contract; but the transaction must be *bona fide*, and not a mere cover to evade the law.

36. What is the reason for the general rule.

That it is contrary to public policy to permit contracts making it to the financial advantage of one of the parties that another person should die, unless supported by an interest on the part of the beneficiary of such a character as to remove the objection.

37. Must the assignee of a life insurance policy have an insurable interest in the life of the insured?

The authorities are in conflict on this point. The decisions of the several States should be consulted.

38. Where the interest of the beneficiary is that of blood or affinity, must there be in addition some benefit to be derived from the continued life of the insured?

On this point the authorities are again in conflict. A majority of the cases would seem to hold that

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such expected benefit is necessary, as, for example, support by the insured.

39. What is the presumption as to an insurable interest in the case of persons related by blood or marriage?

Such interest is presumed, and, in most jurisdictions, it seems, conclusively presumed, in the case of husband. In all other relationships no such presumption exists.

40. What are the rights of an assignee without an insurable interest, as regards money actually paid out by him?

In the absence of fraud on his part, he will ordinarily be protected to the extent of such expenditure on account of premiums and expenses, and the interest thereon.

41. Will a clause in a policy making it incontestable for any cause after the lapse of a specified time, prevent the insurer from setting up the defense of want of insurable interest after the expiration of such period?

No; the defence will be allowed on the ground that a waiver of a right of defense of such character is opposed to public policy, and hence void.

42. Under such a clause, may the insurer defend on the ground of fraud, after axpiration of the specified period?

No; the waiver being considered as of the nature

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of a statute of limitations, and not an agreement to condone fraud.

43. Is the existence of an insurable interest a question of law or of fact?

A question of law dependent upon the facts and the burden of proof is on the plaintiff to establish the facts upon which the conclusion of an insurable interest on the part of the beneficiary may be drawn.

44. What is the first step toward making a contract of insurance?

The application for the insurance on the part of the insured. This application comes in the form of printed questions on points deemed important by the company in passing upon the desirability of the risk, which are answered in writing and signed by the applicant.

45. What is the duty of the applicant for a policy.

To put the insurer in possession of all facts known to the applicant or which should be known to him, and which it is material for the insurer to be informed of. For concealment or misstatement of such material matters, the insurer may be justified in repudiating his obligation under the contract, even after the occurrence of the loss.

46. Is there any distinction in this connection between the different kinds of insurance?

In the United States the applicant is held to a stricter accountability in the case of marine insur-

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ance than of other kinds. This is because of the peculiar character of marine insurance and the special difficulty on the part of the insurer of obtaining accurate information relative to vessels afloat or distant.

47. What is the extent of the applicant's duty of disclosure in fire and life insurance?

From the nature of the risk in such cases and the practice on the part of the insurer of making specific inquiries relative to matters of which he desires information, it is presumed that all material facts are called for in such inquiries. But actual fraud on the part of the insured will vitiate the contract, and the applicant should disclose any special circumstances of peril to which the property is exposed and which are not readily open to the knowledge or suspicion of the insurer.

48. What is the duty of the applicant in answering the questions propounded by the insurer?

To answer fully and in good faith; but, by the American authorities, failure to answer, or to answer fully, may be cured by the insurer's issuing the policy in face of such failure or incompleteness.

49. What is his duty, where the matters in question are open to general observation?

General statements are sufficient, and it is not necessary to go into details.

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50. When is a fact material?

When made the subject of inquiry by the insurer, or when it would influence the insurer in accepting or rejecting the risk, or in determining the amount of the premium charged.

51. Of what effect is the concealment of a material fact through inadvertence or mistake?

The decisions are conflicting, some holding that such innocent concealment will not invalidate the contract of insurance, others holding that it will invalidate it. It has been said that the logical rule is that even such innocent non-disclosures will vitiate the contract in the absence of specific inquiries under such circumstances as to indicate waiver of further information on the part of the insurer.

52. What is the effect of the misrepresentation or concealment of the insured's agent?

To bind even his innocent principal, so that he cannot take advantage of it.

53. What is a representation, in the law of insurance?

A statement made by the applicant for insurance pending the negotiations relative to some fact having reference thereto, and upon the faith of which the contract is entered into (Elliott, sec. 101.)

54. Distinguish between a representation and a warranty.

A representation is made before the issuance of

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the policy. If carried into the written contract and made a part of it, it becomes a warranty.

55. What is the difference as to the necessity of fulfillment?

The warranty, being expressly carried into the contract and made a part thereof and thereby made material, must be literally fulfilled, or the contract is avoided, while the representation, though untrue, if not material to the risk, leaves the contract intact.

56. Distinguish between affirmative and promissory warranties.

An affirmative warranty affirms that certain facts exist at the time the contract of insurance is made; a promissory warranty requires that certain things shall be done or omitted after the making of the contract.

57. How are statements made in the application regarded?

As representations, unless expressly made a part of the insurance contract and warranted to be true.

58. How may the application be made part of the contract?

By attaching the application to the policy and making appropriate reference to the same therein, or by a clause in the policy expressly making the application a part thereof, and basing the issuance of the policy on the faith of the statements con-

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tained in such application, even though the application is not attached thereto.

59. May the parties, by agreement, make an immaterial representation into a warranty?

Yes, but the courts do not favorably regard such technical warranties, and the intention of the parties to that end must clearly appear.

60. Must a representation be a writing?

It may be either oral or written, but where an application has been made in writing, the presumption is that it contains all representations made as an inducement to the formation of the contract.

61. How is the rule as to the fulfillment of warranties affected by the question of good faith?

According to a number of decisions, it is sufficient that statements made in the form of warranties are substantially true.

62. To what extent is the applicant bound by a statement of expectation or belief?

In the absence of fraud, the failure of such expectation or belief will not avoid the policy. But the applicant will be bound by positive statements, though based upon information derived from others.

63. How is an affirmative representation regarded?

As merely stating an existing fact at the time the representation is made. If such existing condition is required to be continued for the life of the insur-

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ance contract, the insurer should insert it as a warranty in the contract itself. Thus, where the application states that the house to be insured is occupied, such mere statement is not a warranty that the house shall continue to be occupied during the continuance of the insurance.

64. Of what effect is the non-fulfillment of an oral promissory representation?

It cannot invalidate the insurance contract; if in writing, it might have been incorporated into the contract and thus made into a warranty, as we have seen, but it cannot have this effect when oral, as this would be to violate a fundamental principle against admitting oral evidence to alter a written contract.

65. What qualification to the above rule?

That the oral representation must be made in good faith, without intention to mislead or deceive.

66. When will a representation avoid the contract of insurance?

When it is both false and material. In such case it is not necessary to show that it was fraudulently made, but where actual fraud is shown in the case of a representation on the faith of which the policy was issued, the materiality of the representation will be conclusively presumed.

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67. To what extent must a material representation be true?

It must be substantially true.

68. What is the test of the materiality of a representation?

Its probable effect on the mind of an ordinarily prudent and careful underwriter, and not its actual effect in the particular case. The parties may, however, by express agreement, make material, a representation otherwise immaterial.

69. In determining the materiality of a concealment or misrepresentation, upon whom is the burden of proof?

Upon the defendant, and this is so even where an untrue answer by the insured concerning other insurance is admitted, the presumption against a fraudulent misstatement offsetting the presumption that the omission is intentional.

70. How, in the case of a warranty?

According to the weight of opinion, the burden is on the plaintiff, who must prove the strict performance of the conditions contained therein.

71. How may the right of the parties to decide by agreement the materiality of statements as strict warranties, be modified?

By statute, in the interest of public policy.

72. Under such statutes, how is the materiality of statements determined?

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By the court, or, where the facts are in dispute, by the jury. And the parties cannot waive the benefits of the statute even by express agreement to that effect.

73. What is the consideration to the insurer for issuing the policy?

The premium paid by the insured in ordinary cases, and the dues or assessments of the members of mutual insurance and benevolent societies.

74. How is the amount or rate of the premium determined?

Usually by stipulation in the policy. But it may be ascertained from usage or custom.

75. Is the premium a debt enforceable against the insured?

This depends upon the terms of the contract. Where the payment of the premium is made a condition precedent to the attaching of the risk, and the contract goes into effect so that the insured has the benefit thereof, the premium becomes a debt which may be recovered at law. But if the premium is made payable at stated intervals with the stipulation that the policy shall lapse in default of payment of the premium when due, the payment thereof is optional with the insured, subject to the conditions stated, and cannot be enforced against him.

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76. Must the premium be actually paid beforeh e risk attaches?

Not unless so provided by the terms of the contract, which is generally the case in life insurance, but not in marine and fire insurance.

77. How may forfeiture of a life insurauce policy as provided for by the terms of the contract, for nonpayment of the premium by a certain date, be waived by the company?

Either expressly, or the waiver may be implied from the circumstances.

78. In what form must the premium be paid?

It is presumably payable in cash, but may be paid in any other commodity which the insurer is willing to accept.

79. When must the premium be paid?

When due according to the terms of the policy, or within the time of extension given expressly or implied from the course of dealing.

80. Must the insurer give notice to the insured before the premium is due?

Not unless so required by statute, or the insured is entitled to rely on such notice from the established custom of the insurer. Where notice is required by statute, the burden is on the company to show compliance with the statute.

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81. Can premiums paid be recovered upon forfeiture of the contract by breach of condition?

Not unless the policy was void *ab initio.*

82. How are the liabilities of members of mutual insurance companies and benevolent societies governed?

By the provisions of the special statutes under which they are organized, together with the by-laws and the certificates of the members.

83. When does their liability cease?

This is fixed by the terms of the contract or of the statute, and may or may not be absolute so as to terminate with the forfeiture of the rights of the member in question, or to continue thereafter.

84. What is the effect of non-payment of an assessment?

According as provided, it may work the delinquent's forfeiture of the rights of a beneficiary, or merely his suspension. Where suspension or forfeiture is expressly provided as the penalty for non-payment, the mere fact of non-payment effects this result *ipso facto*, and no affirmative action on the part of association is necessary.

85. What is a member's right to withdraw and relieve himself from liability for assessments for further losses?

He generally has the right, but not so as to escape

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liability on assessments subsequently made to cover losses occurring during his membership.

86. In case of insolvency of the company, on whom may the receiver levy assessments?

Upon those members who are absolutely liable for the company's losses, but not upon those relieved by forfeiture from further liability.

87. What is the effect on the right of recovery of the death of a member during the period of suspension?

To defeat the right, unless occurring within the time allowed by the terms of the contract for payment of the assessment. And payment of the assessment after the death of the insured, accepted by the association in ignorance of the death, will not of itself revive the right to recover.

88. How may a suspended member be reinstated?

By complying with the requirements adopted for that purpose, or by acceptance of the assessment during the suspension on the part of the association, with full knowledge of the facts.

89. How may strict compliance with the requirements as to payment of assessments and dues be waived?

Either expressly or by implication, and the tendency of the courts is to protect the members from forfeiture of their rights, although it seems from the

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decisions that the officers of such associations cannot waive provisions of the by-laws relating to the substance of the contract.

90. How and by whom is the business now generally conducted?

By incorporatioas formed for that purpose, and acting through their officers and agents.

91. Who is an insurance agent?

Usually one employed to represent the insurer, though the term may be also applied to one representing the insured.

92. What power of discriminating have the several States against parties conducting insurance business within their confines?

They may, by legislation, favor domestic corporations as against foreign corporations, but under the Federal Constitution they cannot so discriminate between individuals who are citizens and those who are not.

93. How may the fact of agency be shown?

By any competent evidence, such as an express contract of agency, the recognition of the agent as such by the principal, the existence of facts from which agency may well be inferred as a matter of law, or of mixed law and fact, etc., etc.

94. To what extent will the terms of the contract of employment govern the agent's powers?

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The terms are conclusive as between the principal and the agent, and also as to persons dealing with the agent with knowledge of the terms. But where there are special limitations on the authority of the agent, unknown to the third party dealing with the agent, such third party may assume that the agent's powers are those within the apparent scope of his employment.

95. How in general, are the principles governing insurance agency determined?

In a large measure by the general law of principal and agent.

96. What is the obligation of a person dealing with an insurance agent, under circumstances showing that the agent's authority is limited and special?

To ascertain the extent of such limitations.

97. What is the insurer's liability with regard to sub-agents and clerks?

According to the established rule, he is liable for the acts of his general agent's subordinates to whom such agent has delegated authority within the scope of his agency.

98. Distinguish between insurance agents and brokers?

The broker is generally the agent of the insured, not of the insurer. But it is said that the facts of

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each case must determine whether the broker is the agent of the insurer, or of the insured, or of each for certain purposes.

99. What is the measure of an agent's power?

By the authority actually conferred upon him by the principal, and the apparent or ostensible authority.

100. To what extent is the insured bound by restrictions in the application or in the policy?

He is generally, but not always held to be bound by such as appear in an application signed by him, and of which he thus has at least constructive notice. Where contained in the policy, the question of actual notice may be of first importance. In many States the form of policy to be used is prescribed by statute.

101. How may the insured have notice of restrictions on the apparent authority of the agent, so as to be bound thereby?

Either actually or constructively. And he will generally be held to have notice of restrictions contained in the application signed by himself.

102. Is he bound by restrictions on the company's agent provided for in the policy.

Some courts hold not, while, according to others, the insured, by accepting the policy containing such limitations, agrees to be bound thereby.

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103. Can the company restrict the power of its officers or general agents by provisions to that effect in the policy?

No; whatever it can lawfully do can be done through its properly authorized agent.

104. Upon what ground is the company charged with knowledge of facts of which its agent has notice?

That the agent is presumed to have communicated such facts to his principal, and if not, that the third party has the right to regard the agent as the duly accredited representative of the company for the particular business in hand, with the consequent power to bind his principal by his acts and knowledge of facts.

105. What is waiver?

The intentional relinquishment of a known right, and may be either express or implied.

106. Must the waiver, to be binding, be supported by a consideration?

It has been held that there must either be a valuable consideration to support it, or such facts as to constitute an estoppel, but by the prevailing rule no new consideration is requisite, and, at least, no technical estoppel.

107. What may be waived by the insurer?

The provisions of the insurance contract, gener-

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ally, since they are mostly intended for the benefit of the insured, but not provisions of the charter or of the statutes declaring the act in question void if not done in accordance therewith.

108. Must the insurer at the time assign the reason for refusing to pay a loss?

No, but it may, by assigning a specific reason, thereby evince an intention not to resort to other defenses, so as to be estopped from afterward resorting to the same.

109. What power of waiver has an agent of the insurer?

Only within the scope of his agency, but if his authority is general, so that his acts are those of his principal, he can waive such provisions of the policy as the company itself might waive.

110. How are provisions of insurance policies construed, stipulating that their terms or conditions can be waived or altered only by an indorsement in writing upon the policy itself?

As applying only to conditions entering into and forming an essential part of the contract, not to those concerning what is to be done after loss suffered. And even the first named are held by some courts to bind any sub-agents or special agents, not general agents and officers who, if acting within the scope of their authority, may orally waive such provisions of the policy.

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111. When is the company estopped by knowledge on the part of the agent of facts which would defeat the policy?

Only when there is no application signed by the insured stating to the contrary of such facts.

112. Where erroneous statements in the application are inserted by the agent, may such fact be shown by oral testimony?

Yes; not, indeed, to contradict the written warranty and thus violate a fundamental rule of evidence, but to show that the alleged representations of the insured as set forth in the application are not, in fact, his own; but the act of the agent by which the principal is bound.

113. What is the effect of collusion between the applicant and the agent?

To release the insurer from liability. The principal is indeed bound by his agent when acting within the scope of his apparent authority, but the applicant cannot profit by this general rule so as to take advantage of his own participation in the agent's fraud.

114. In the States where a standard form of insurance policy is prescribed by law, what is the effect of using another form?

In most of such States a penalty is provided for using other forms, but the company using them

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shall be bound by the contract. The principal object of such laws is to protect the policy holder, rather than the company.

115. What is the rule as to the construction of an insurance policy?

That it shall be construed strictly against the insurer. This rule, adopted before the introduction of the standard policy as prescribed by law, was based on the ground that the insurer himself prepares the form of the contract. But even in the standard policies the same terms are often used as theretofore, with the presumption that they are to be taken in the same sense, and the rule, seems still to prevail.

116. What is the effect of the breach of a condition involving a forfeiture?

The decisions are not uniform, but it seems that, by the weight of authority, the breach if no forfeiture is at the time declared by the insurer, merely suspends the insurance during the continuance of such breach, and if discontinued during the life of the policy will revive the insured's rights thereunder.

117. Of what effect is the incorrect spelling of the name of the insured in the policy?

This is immaterial, where the identity of the party is fairly indicated.

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118. Where the standard form provides for the insertion or the dates limiting the term of the policy, and this is not done, what is the effect of such omission?

The policy will be presumed to be in force for a reasonable time, and the burden is on the company to show that the policy was not in force when the fire occurred.

119. At what hour of the day will the contract expire, where the day of the month only is given in the policy?

At midnight of the last day named, unless there is an invariable custom to the contrary. It is usual to specify in the policy that the time of expiration is noon of the last day named.

120. What is the object of the descriptive clause in a fire insurance policy?

Largely to identify the property, and where this has been accomplished false or erroneous parts, such as those describing a one-and-a-half story house as a three story house, will be disregarded.

121. Where the policy covers goods held in trust, how is the term "trust" to be construed?

In its ordinary, popular sense, and not in its technical meaning. Thus, where the policy refers to the property as the insured's "own or held in trust," it is taken to include a piano left with him to rent or sell.

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122. What is covered by a policy upon a stock of goods?

Additions made from time to time in the ordinary course of business, as well as that on hand at the time of the issuance of the policy.

123. Is parol evidence admissible to identify the property covered by the policy?

Yes, as, to explain a latent ambiguity in the description, but not so as to establish a new and different contract. And in general, no recovery can be had for property not described in the policy, in the absence of mutual mistake or estoppel.

124. What is the presumption of the company's knowledge of the character of the business of the insured?

That it is acquainted both with the nature of the goods usually kept by those in the particular kind of business and with the methods of conducting that business, and that it makes the contract of insurance in the light of such knowledge.

125. What determines whether the description of the property insured is or is not a warranty?

The language of the contract, as showing the intention of the parties.

126. What does the term "merchandise" in a policy include?

This depends upon the surrounding circumstances.

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Thus, if inserted in a policy to describe the goods of a merchant, it may be confined to such goods as are kept for sale; if used to describe the goods of a painter, it may refer to goods intended for use, not for sale.

127. Where a particular building is referred to in a policy, is the protection of the policy confined to the building specified?

Not necessarily. Thus, where the property insured was described as the "Wolfe house," it was allowed to be shown by parol evidence that it was intended to include a certain barn. A policy insuring a steam saw mill covers also the machinery necessary to make it a saw mill in fact, and the word "house" covers whatever is necessary to a house as a building.

128. Where movable property is insured, may it be moved from place to place and still be protected by the policy?

This depends upon the particular contract. As a rule, description of the place wherein the property in question is, renders the location material to the risk, but this general rule is subject to consideration of the character of the particular property, of the primary object in effecting the insurance and of the uses to which the property would reasonably be put.

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129. Where the location is material, what is the effect of removal and subsequent return of the property?

To suspend the policy during the continuance of the removal, and, if there is no loss in the meantime, to revive it upon the return of the property.

130. In such case, what are the rights of the parties as to cancellation of the contract upon removal of the goods?

In the case of goods removed from a dwelling house in which they were insured, it was held that the insurer by the contract of insurance became responsible for the safety of the goods only while in the house, that it was the insured's option to keep them there or elsewhere, and that the insured could not cancel the policy without the consent of the insurer.

131. Where the policy insures only against direct loss or damage by fire, what meaning is given the word "direct"?

It means that the fire must be the immediate or proximate, not the remote cause of the damage or destruction.

132. What does "loss by fire" include?

Other than that from combustion, as, for example, damage from water used in extinguishing the flames.

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133. What is the scope of the term "fire"?

Only fire outside of its usual and ordinary uses. Thus, under the common fire insurance policy, no recovery can be had for damage, caused by smoke from a lamp in the absence of ignition outside of the lamp.

134. How is the fact of agency proved?

By any competent evidence, and even though the policy may provide that no one shall be deemed the agent of the company unless duly authorized in writing, and such written authority cannot be shown.

135. Must the extent and nature of the insured's interest be disclosed:

In the absence of a provision to that effect it is sufficient to merely show an insurable interest at the time of the loss, without such explicit specification.

136. What is the effect of fraud or false swearing on the part of the insured, in the case of a standard policy?

To avoid the entire policy, and that whether the offense is committed before or after the loss; but mere mistake in the expression of opinion, or an innocent misstatement will not work a forfeiture.

137. What do many of the standard policies

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provide as to loss of the insured property through invasion, insurrection, riot or civil war?

That the insurer shall not be liable therefor, and this whether the loss be caused directly or indirectly by the means named.

138. Is the insurer liable for goods stolen while in course of removal to escape destruction from fire in the building in question or an adjoining building?

Yes, unless there is a provision in the policy excepting loss by theft.

139. Is the insurer liable for loss occasioned by the negligence of the insured or his representatives?

Yes, in the absence of an express provision to the contrary.

140. Where the policy excepts from liability for loss from explosion, does the exception extend to fire resulting from the explosion?

On this point the decisions are conflicting. The standard form provides for liability for loss from fire resulting from an explosion, while exempting from liability for loss occasioned by the explosion itself.

141. What is the insurer's liability for loss by lightning?

Unless specifically assumed, he is not liable, unless the loss is caused by fire resulting from the lightning, and then only to the extent of the damage caused by the fire.

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142. What is provided in the standard policies as to loss occasioned by fall of the building in which the goods are?

That the insurer shall not be liable, unless the fall is the result of fire. And the exemption applies if the fall occurs while the building is on fire but before the fire has reached the insured goods, if the fall is not due to the fire, as, where the building, under such circumstances, was blown down by wind.

143. Suppose under such a provision the loss occurs from fire breaking out after the fall, is the insurer liable?

There are decisions to the effect that he is not.

144. Where certain articles are excepted from the protection of the policy, upon whom is the burden of proof in case of loss?

Upon the insurer to show his exemption as to the particular articles lost.

145. How are the provisions avoiding the policy in case of other insurance of the insured property regarded?

They are sustained as reasonable and valid, on the ground that their object is to prevent temptation to destroy, or to lessen protection and care of the property on the part of the insured.

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146. Under such provision, is the policy absolutely void?

It is held to be merely voidable at the option of the insurer.

147. What is the scope of a provision requiring the insured to give notice of any other insurance effected?

It includes both prior and subsequent insurance.

148. Under such restrictive provisions, what is the effect of other insurance procured by a third party?

If procured by a stranger without the knowledge or consent of the insured, his rights are not affected, but otherwise if he subsequently ratifies the act, or accepts the benefits thereunder.

149. What is the purpose of introducing in such restrictive provisions the term "valid or invalid," as referring to the other insurance provided against?

To avoid controversy as to the effect of a subsequent policy containing like provision against prior insurance, as otherwise it might be a question whether such subsequent insurance, in view of its own restrictive provision, is any insurance in fact within the meaning of the restrictive clause of the prior policy.

150. How are such provisions against other insurance, valid or invalid, regarded?

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They have been generally sustained, though according to some of the decisions the subsequent void policy is a mere nullity and of no effect as regards existing rights.

151. Where the words "valid or invalid" do not occur, how is the restrictive clause construed?

By the weight of authority, as applying only to other valid insurance, on the ground that the phrase "other insurance" unless otherwise expressed, must refer only to contracts legally binding.

152. Where the consent of the insurer to additional insurance is required by the terms of the policy to be indorsed thereon, what is the effect of the mere oral consent of an agent or official of the company to such additional insurance?

This is said to be always a question of authority. But it is held that if the company learns of the additional insurance, and fails to take some affirmative action within a reasonable time thereafter, it waives the provision.

153. What is the effect of subsequent additional insurance upon part of the insured property, where the contract is entire?

The decisions are not uniform, but by the weight of authority it will defeat the entire policy under the provision against double insurance.

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154. What is the effect of an increase of the hazard?

If this be brought about by any means within the knowledge or control of the insured, it defeats the policy, as to whether it renders the policy void or merely suspends it during the continuance of the increased risk, the decisions differ.

155. How may such an increase be caused?

In numerous ways, as, by alteration in the physical structure of the property insured, by introducing new customs or methods of carrying on the business, or by discontinuing certain precautions.

156. How is the question whether there has been an increase of the hazard determined?

It is a question of fact for the jury. But the court will take judicial notice of the natural consequences of certain acts, as, that the danger of fire is increased by the storing of fireworks in the particular building.

157. How is the provision against an increase of hazard to be treated?

It must be given a reasonable construction, and not be taken to refer to every casual or temporary change. The materiality of a particular change is generally, but not always determined by its effect upon the premium rates.

158. What provision is often contained in stand-

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ard policies regarding repairs to the building insured?

That the policy shall be void, unless otherwise agreed in writing thereon, by the employment of mechanics in building, altering or repairing the premises in question for more than a specified time. Such provisions are sustained as reasonable, on the ground that the insurer may be willing to carry the risk at the rate charged only on condition that the premises remain in the same condition as when insured.

159. How are provisions regarded to the effect that if the interest of the insured in the property is other than sole and unconditional ownership, such fact must be disclosed to the insurer?

As reasonable and binding upon the insured, on the ground that the character of the insured's interest is a matter of importance to the insurer in accepting or rejecting the risk and in determining the premium rate.

160. When will a description in general terms of the quantity and quality of the insured's title, be sufficient?

When the policy does not expressly provide for a more exact disclosure.

161. Are such provisions as to absolute ownership affected by the existence of incumbrances on the property?

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No; they refer to the quality of the estate or interest, and the insured is not bound to disclose mortgages or other incumbrances unless so required by some other clause of the policy.

162. Under such provisions, are the words "title" and "interest" synonymous?

No. Thus, a mortgagee may have an unconditional, as opposed to a speculative, interest as such, and may insure the same.

163. Give examples of violations of such provisions?

An owner of a one-half, undivided interest has not an unconditional and sole ownership of the property within the meaning of the provision, nor has a purchaser on the installment plan, the title remaining in the vendor pending full payment.

164. How is a provision regarded, stipulating for the forfeiture of the policy if the building insured be on ground not owned in fee-simple by the insured?

As valid. And a life interest, or an undivided interest on the part of the insured, is regarded as a breach of the provision.

165. When will the placing of a chattel mortgage on the insured property work a forfeiture?

When so provided in the policy. Otherwise, in

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case of provision only against increase of risk or change of title, interest or possession.

166. What is the scope of a provision against change of title, interest or possession other than by the death of the insured?

It covers only material changes, and is not affected, for example, by appointment or change of receivers.

167. What is the effect, under such provision, of a transfer of a part interest?

This depends upon the language employed, and where it provides merely against sale or conveyance of the property, without further specification, it is held that alienation of anything less than the insured's entire interest will not work a forfeiture. But a provision against transfer or change of title is violated by a conveyance of an undivided interest.

168. Give illustrations of transactions which do not constitute violations of provisions against change in title.

In some cases of executory contracts of sale; as, where the title remains in the vendor until payment of deferred installments. On the other hand, a contract of sale, by which the purchaser takes possession, though the transaction remains to be completed by payment of the balance of the purchase price and the making of the deed, has been

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held a breach of condition, even though the contract of sale provides for its avoidance in case of default in payment at the agreed time.

169. Is the execution of a mortgage on the insured property a violation of a provision against change of title or interest?

By the weight of authority it is not, and a deed intended as a mortgage, though absolute in form, comes within this rule.

170. What is the effect of an invalid conveyance under such provisions?

Such does not constitute a violation thereof, as, in case of a deed executed by the insured while insane. But a voluntary conveyance without consideration is a violation.

171. What is the effect of a transfer between partners under a provision against change of title or interest?

By the general, but not universal, rule, such a transfer does not come within the provision.

172. Does the standard policy provide against alienation or change of interest only by the voluntary act of the insured?

No; there is a provision also against such change by legal process or judgment. But a mere seizure of the insured goods on execution will not violate such provision, at least while the insured has his

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right of redemption, nor will an illegal levy, assessment, seizure and sale.

173. Will a general assignment of the insured's property for the benefit of creditors violate a provision against a sale or transfer of the insured property or any interest therein?

It is held that it will. But a like provision was held not violated by a transfer to an assignee in trust to pay the insured's creditors, the insured in this case remaining in actual possession of the goods.

174. How will devolution of the insured property through the death of the insured, be viewed, under a general provision against transfer of such property?

By the weight of authority, as not constituting a breach of the condition. And some policies expressly except transfer by death from the provision.

175. Will a lease of the insured property violate a provision against any sale, transfer or change in title or possession?

It is held that it will not, nor will a lease with privilege of purchase at any time within the term, where the privilege is not acted on.

176. How are provisions against assignment of the policy before loss regarded?

As reasonable and valid, and not an unlawful restraint upon the right to transfer property. Fire

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insurance contracts are personal in nature; hence, not assignable without the insurer's consent.

177. Under such a provision, what is the right of assignment on the part of the insured after loss?

He may then assign the policy, as a mere chose in action, without the insurer's consent, but the assignee takes it subject to the same defenses as would avail against the insured.

178. Where the policy provides against the keeping of designated explosives on the insured premises, how is such a provision regarded?

As proper, and binding on the insured. But where such a clause appears in the printed part of the policy, and the written part describes certain goods or property used in a certain business, if the inflammable or explosive substances mentioned in the printed prohibitory clause are a part of the stock of property ordinarily used in such business, the general rule giving preference to the written over the printed part of a contract, when the two are in contract, prevails.

179. What is the scope of a provision against vacancy of the insured property?

By the weight of authority a mere temporary vacancy will not defeat the right of recovery. But the standard form eliminates this question by spec-

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ifying the time (as, ten days) beyond which a vacancy of the premises may not continue.

180. What provision is contained in the standard poliey of fire insurance for necessary removal of the insured goods?

That in case of danger from fire the property may be removed and the policy shall remain in force for a designated period (as, five days).

181. Does a renewal of the policy create a new contract?

This depends upon the terms. Where the renewal is optional with both parties and upon a new consideration, it has been held that it does, but subject to the same terms and conditions as the former, unless otherwise expressed.

182. What is the duty of the insured upon renewal of the policy?

To inform the insurer of any change in the nature or use of the property by which the hazard is increased. But the right of the insurer to be so informed may be waived.

183. What is meant by a reformation of a renewal policy?

That the insured, where, contrary to the representations of the insurer, the renewal policy contains conditions not in the original policy, may enforce his rights as under the original policy. It

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may, however, lie within the discretion of the court to refuse relief on the ground of the insured's neglect to discover the change within a reasonable time.

184. What is the right of the insured as to cancellation of the policy?

In the absence of provision by statute or by the terms of the insurance contract itself, it cannot be cancelled without the consent of the insured. Even where so provided, the company cannot exercise the right to cancel under circumstances operating as a fraud on the insured, as, in the face of a pending conflagration.

185. Must the notice of cancellation be given to the insured himself?

It is sufficient if the person to whom such notice is given is at the time the authorized agent of the insured for the purpose of canceling the policy. But an agency for such purpose is not, as a matter of law, presumed to continue from an agency to procure insurance.

186. Upon cancellation by the company, what is required in the standard form as to return of premium?

That if the premium has been actually paid in, the unearned portion thereof shall be returned. And such portion must be actually returned or tendered; mere notice that it will be returned is not sufficient.

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187. Where it is provided by the standard policy that the company may cancel by giving a five-days' notice, what must be the character of the notice?

The notice must be unequivocal, and not a mere notification of a desire to cancel or to deliver the policy for cancellation. Moreover, the notice must be communicated to the insured, and it seems that mere mailing of the notice will not effect a cancellation, where the insured does not, in fact, receive the notice.

188. What limitations does the standard policy place upon the power of waiver?

It provides that no officer, agent or other representative of the company shall have power to waive any provision or condition of the policy except such as, by the terms of the policy, may be the subject of agreement indorsed thereon or added thereto, and that as to such, the waiver must be actually written thereon or attached thereto, as thus provided. Nevertheless, by the prevailing rule, a general agent of the company may waive this as well as other provisions.

189. What is required of the insured, under the standard policy, in case of loss?

That immediate notice of any loss occurring by fire shall be given the company in writing, and, if so required, shall he furnish certificates of a magistrate or notary as to the amount of the loss. There are

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further requirements as to protection of the property from further loss, sworn statement as to belief concerning cause and time of the fire, the interest of the insured and of others in the property, etc., etc.

190. How are such provisions censtrued?

Those prescribing the duty of the insured after loss are not construed with like strictness as those limiting and defining the terms of the contract itself.

191. What is meant by proof of loss?

Such a statement of facts, reasonably verified, as will, when established in court, *prima facie* require payment of the loss by the insurer.

192. How is the requirement as to immediate notice construed?

That the notice must be given with due diligence and within a reasonable time, according to the circumstances of the case. So of the requirement to forthwith separate the damaged from the undamaged personalty.

193. How is proof of the loss required to be made?

By the insured, and signed by him. But if he is not in a position to personally comply with the requirement, as in case of his absence from the state, his agent may sign.

194. Will failure to furnish proof of the loss within the stipulated time, operate as a forfeiture

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It is generally held that it will not, unless so provided by the policy. Thus, the failure may be cured by furnishing the proof within the time allowed for bringing action.

195. How is the requirement to render a statement to the company construed?

It has been held, not uniformly, however, that it is sufficient to mail the proofs within the specified time, though not received by the company until after its expiration.

196. When must the company make request for the magistrate's or notary's certificate?

Before suit brought by the insured to recover the amount of the loss. And it has been held that the magistrate's certificate is not conclusive against the insured as to such amount.

197. What is the duty of the company when it objects to the proofs of loss on technical grounds?

It must specify the defect objected to, if it is one that may be remedied, or be held to have waived it.

198. To whom must notice and statement of loss be given by the insured?

It is provided by the standard policy that such shall be given to the company, but if given to a duly authorized agent of the company, it is sufficient.

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199. What is provided as to exhibition of property and records?

That the insured, as often as required, shall exhibit to anyone designated by the company whatever of the insured property remains, and all books of account, invoices, etc., or certified copies of those lost. Also, that the insured shall submit to examination under oath before anyone named by the company.

200. How is the provision for examination regarded?

Generally, as a condition precedent to the right of recovery. Refusal on the part of the insured to submit to such examination has been held in some cases to work a forfeiture, in others, merely to prevent recovery until the provision is substantially complied with.

201. What is the effect of a clause requiring the insured to keep his account books in a fire-proof safe?

To render compliance therewith essential to a right of recovery. But substantial compliance is all that is required.

202. What provision is made in the standard policy as to arbitration?

That disagreement regarding the amount of loss shall be settled by arbitrators, styled appraisers,

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chosen, one each, by the insured and the company; which appraisers, in case of failure to agree between themselves, shall submit their differences to an umpire selected by themselves.

203. When only can this provision be invoked?

When a real disagreement takes place between the parties to the insurance contract, and not a mere general objection on the part of one to the statement of the loss by the other, without specifying the items objected to.

204. What is the effect of such provision?

It is generally held valid as affording a convenient method of ascertaining the amount of loss to be recovered, without ousting the jurisdiction of the court to determine whether the right of recovery exists in the first place.

205. Must such provision be resorted to before an action can be brought to recover for loss under the policy?

Not unless so agreed in the policy. If not so agreed, arbitration is optional with the parties.

206. What is the effect of an award by the arbitrators?

It is binding upon the parties, unless invalid, as, for misconduct, partiality or fraud on the part of the arbitrators. And the burden of proof is on the party alleging the invalidity.

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207. Will the right to arbitrate on the part of the company be strictly upheld?

In general, it may be said that the courts are not slow to construe the company's conduct into a waiver of the right; sometimes, however, the question is left for the jury.

208. How is a demand for appraisal and arbitration on the part of the insurance company construed?

As an admission of liability under the policy, in the absence of provision to the contrary in the contract.

209. What right of rebuilding has the company?

If so provided in the contract, it may elect to rebuild the damaged property within a reasonable time and upon giving notice. It is also usual for the company to reserve the right to take any or all of the damaged articles at their appraised value.

210. What is the effect of the company's election to rebuild?

The insurance contract becomes one to rebuild, which supplants the original one to pay money for the loss. But the company, by waiting an unreasonable time after proof of loss, may lose its right of election.

211. Will the company be allowed for the differ-

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ence in value between the old building destroyed and the new one it constructs?

It seems from the decisions that it will not, but that if it elects to rebuild it must construct a new building of new materials, and of like plan and dimensions as the old.

212. Within what time is loss under the policy payable?

It is often provided that the company is not liable to make paymont under a fire insurance policy until sixty days after notice and satisfactory proof of the loss, and it seems that the insured cannot bring suit for recovery until expiration of the sixty days.

213. May the insured be limited to a period less than that of the statute of limitations within which to sue for recovery?

A provision in the contract to this effect (as, for a period of twelve months after the fire), is generally held enforceable, though the decisions are not uniform on this point.

214. What is a valued policy?

One which fixes the amount to be paid in case of loss of the property insured.

215. When will the company be liable only for the actual cash value of the property at the time of the loss or damage?

Where the policy so provides, which renders it an

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open policy. But such provision must be construed with reference to the valued policy laws which may be in force in the particular jurisdiction.

216. What is the rule of construction, as to whether a policy is a valued or an open one?

It will be regarded as an open one, unless a contrary intention appears. And such intention is ascertained by refcrence to the whole instrument.

217. What is the effect of a statute requiring all policies to be valued?

To render the language of the particular policy immaterial, so that the amount written in the policy will be conclusively taken as the true value of the insured property and the amount recoverable in case of total loss, and this notwithstanding a provision in the policy by which the company is liable only to the value of three-fourths of the loss.

218. How are such valued policy laws regarded?

They have been vigorously opposed by the insurance companies, but their constitutionality has been sustained by the Supreme Court of the United States.

219. What is the meaning of "total loss" under a valued policy?

When the building is destroyed to such an extent that the remnant is insufficient as a basis to restore the same. And in determining this question of

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total loss, the condition of the foundation of the building is not to be considered.

220. Where several companies have insured the same property, what is the extent of the liability of each in case of loss?

The insured may recover the entire amount from any one of the companies, or a proportionate amount from each. In the former case the insurer thus paying the entire amount is entitled to contribution from the others. But if, as is often the case, the policy provides that the insurer is liable only *pro rata*, the insured is bound by such provision.

221. What is the right of the company in case the fire is caused by the act or neglect of some person or corporation, such as to give rise to a right of recovery for same?

It is provided in the standard policy that the company, upon payment of the loss, shall be subrogated to the extent of its payment to the insured's right of recovery, the insurer being treated as a surety with a surety's rights.

222. What are the rights of a mortgagee of the insured property?

In the absence of special provisions in the contract, he stands, as regards the insurer, in the same position as the mortgagor; hence, can only recover when there has been no act or conduct of the mort-

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gagor working a forfeiture. And in the absence of all provision in the contract, covering his rights, he has no right of recovery at all against the insurer.

223. Is there any standard form of life insurance policy?

No, each company uses its own form. But the general tendency is toward a simple form of policy.

224. How many parties to a life insurance contract?

There may be as many as four, namely: the insurer, the insured, the beneficiary and the holder of the policy.

225. Who is the beneficiary?

The person to whom the insured directs the amount insured for to be paid upon the death of the insured.

226. What is the rule for construing the language designating the beneficiary?

That the intention of the parties will, if possible, be carried into effect.

227. What is the character of the beneficiary's interest?

The general rule is that the beneficiary acquires a vested right in the policy immediately it is issued, and this right cannot be impaired without his consent. And the interests of the wives and children of the insured are protected by statute in many States against the claims of the insured's creditors.

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A different rule obtains in the case of mutual benefit associations.

228. What exception to the above rule as to the beneficiary's rights in the case of life insurance?

Where so provided by the terms of the contract, the insured may change the beneficiary at will, in which case the beneficiary has a mere expectant interest until made vested by the death of the insured.

229. How is a change of beneficiaries made under a mutual benefit certificate?

The general rule is that this must be done according to the provisions of the society's rules. But courts of equity will make allowance for special circumstances excusing strict compliance on the part of the insured.

230. Is the payment of the premium a condition precedent to the policy's taking effect?

This may be so provided by the terms of the contract, so that there can be no recovery if the premium has not been paid during the lifetime of the insured. But a note of the insured, accepted by an agent in accordance with a custom well known to the company, amounts to payment of the premium, and so in case of delivery by the company of the policy acknowledging on its face receipt of the first premium.

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231. What is the effect of an under statement of the applicant's age?

If material, this will work a forfeiture. But provision is sometimes made that any error of this kind shall be adjusted by paying such amount as the premiums paid would purchase at the table rate.

232. What is the right of the insured as to assignment of a life insurance policy?

The general rule is that a valid life insurance policy may be assigned like other choses in action. But this right may be restricted by provision in the contract by which no assignment shall take effect until written notice thereof has been given the company.

233. What is the object of such restrictive provisions?

To safeguard the company against the danger of having to pay the amount of the policy to more than one claiming beneficiary, and non-compliance with the requirement as to written notice will not render the assignment void, but merely voidable at the option of the company.

234. In what form may the assignment be made?

It is held that such an assignment as will give effect to the intention of the parties, is sufficient, as, delivery of the policy with verbal directions as to the disposition of the proceeds, and this, though

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the policy itself provides that the transfer must be in writing.

235. What is the assignee's right to assign in turn?

He has this right, under proper circumstances. But a life insurance policy is not a negotiable instrument, and cannot be indorsed at will.

236. How is a clause in a life insurance policy, making it incontestable after a stated period, regarded?

As valid, and not opposed to public policy. And, by the weight of authority, such a provision is in the nature of a statute of limitations, and precludes a defense after the expiration of the stated period even on the ground of fraud.

237. Is an application for an insurance policy part of the contract?

It may be made so by a provision to that effect in the policy, so that the statements and answers therein contained thereby become warranties, at least if so expressly provided.

238. How is a provision avoiding the policy in case of suicide by the insured, regarded?

It is sustained as a reasonable limitation upon the company's liability, though in some states such a provision is prohibited unless it appears that the

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insured contemplated suicide at the time the policy was issued.

239. What is the effect of suicide by the insured, where no provision covering suicide is contained in the policy?

It is held by the Supreme Court of the United States that suicide by the insured, while sane, is not one of the risks covered by the policy, even though it does not except such a death, and further, that a contract expressly providing for payment in case of suicide by the insured while sane, would be against public policy.

240. What distinction is sometimes made, in considering the effect of suicide by the insured?

Between cases where the insured commits suicide in order to obtain money for the use of his own estate, and those where the money is payable to a third person as beneficiary; so that in the latter case, it is said, suicide is not, as a rule, recognized as a ground of exemption from liability, or for forfeiture.

241. What is the rule of presumption as to the fact of suicide?

The presumption is always against such fact.

242. What provision is sometimes made as to the effect of death of the insured at the hands of justice or while engaged in violating the law?

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That in such case the insurer shall not be liable on the policy. And execution of the insured for crime will work a forfeiture of the policy, even in the absence of any provision in the policy to that effect.

243. What is the effect of a misstatement by the applicant as to habits, such as the use of intoxicating liquors?

Such a misstatement, if gross, may work a forfeiture of the rights under the policy, and this even in face of a statutory provision making all statements in the application representation and not warranties.

244. What does a statement that the applicant is in good health mean?

This does not refer to mere indisposition, but to such ailments and diseases as are detrimental to the general healthfulness of his system.

245. How is the word "health," in life insurance contracts, construed?

It is difficult to give it a precise definition in this connection. It is said to be a relative term; thus, in determining its meaning in a particular case, regard should be had to the business or employment of the applicant.

246. What is covered by a statement that the applicant has never been seriously hurt?

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It is said that the reasonable interpretation is that the applicant at the time was free from serious physical injury, and does not cover previous injuries which had disappeared and left no after effects rendering the applicant an unfit subject for accident insurance.

247. How is a statement as to the applicant's having consulted a physician, regarded?

In general, it may be said to be material to the risk, so that a false statement on this point may invalidate the policy.

249. As to the family relationships of the applicant?

It is broadly stated that false statements in this respect will invalidate the policy; as, where the applicant falsely states that he is a single man or a widower. All misstatements under this head, however, are not necessarily material so as to have this effect.

250. As to other insurance held by the applicant?

False statements on this point will invalidate the policy. It is a mooted question, however, in this connection, whether certificates in mutual benefit associations held by the applicant are to be regarded as "other insurance."

251. As to rejection of former applications for insurance?

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False statements by the applicant on this point may have the effect of avoiding the policy.

252. Under an accident insurance policy, what is requisite to entitle the insured to recover thereunder?

That the accident be the approximate and sole cause of the injury.

253. May the insured recover on an accident insurance policy for sunstroke?

This depends upon the terms of the particular contract. Thus, where the policy insures against injury caused by violent or external means, a sunstroke incurred in the ordinary course of the insured's business as an architect is a disease, and not within the purview of the policy so as to entitle the insured to recover. Specific provision is sometimes made in the policy as to sunstroke.

254. What is the scope of a policy insuring against accidents while actually traveling in a public conveyance?

Such a policy will cover an injury sustained while the insured is getting on or off the train, either at his destination or at an intermediate station, but a policy insuring against accidents while the insured is traveling by public or private conveyance, will not extend to an injury happening while the insured is walking home a distance of

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some eight miles from the landing place of the steamer he has left.

255. What provision is sometimes made in an accident policy in regard to the insured's meeting with an injury in some occupation classified as more hazardous than that in which the applicant is engaged at the time of the issuance of the policy?

That he may recover only the amount purchasable at the rates for the increased hazard?

256. What is the scope of a provision to the effect that there shall be no recovery for injuries producing no external and visible signs?

It does not embrace such injuries resulting in death.

257. May the insured under an accident insurance policy recover for an injury caused by his own negligence?

He may, unless otherwise provided by the terms of the policy, which is generally done.

258. Where by the terms of the policy, the company is exempt from liability unless the insured exercised due care for his own protection, to what degree of care is he bound?

To that which, under like circumstances, an ordinarily prudent man would use.

259. What provision is sometimes made as to voluntary exposure to unnecessary danger?

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That in case of such conduct on the part of the insured resulting in injury, he may not recover. And this may include cases where the danger is either obvious to the insured at the time he exposes himself to it, or would be obvious if he were paying proper attention to his conduct.

260. Where the insured stands on the platform of a rapidly moving train, is this voluntary exposure to a known danger?

This has been held to be a question of fact for the jury.

261. What is the scope of the word "unnecessary?"

The necessity implied in such provision is not merely such as is unavoidable and inevitable, but also embraces any object or purpose which men of ordinary responsibility and prudence would consider of such serious and weighty importance in the performance of duty as to justify the incurring of risk or danger in order to accomplish it; thus, in certain urgent contingencies, the boarding of a moving train would not be such voluntary exposure to unnecessary danger as to defeat the party's right to recover under the policy.

262. Distinguish between the terms "bodily infirmity" and "disease."

These words, used in an accident policy to ex-

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empt the insurer from liability for injury resulting therefrom, are practically synonymous.

263. Will an accident policy cover injuries inflicted on the insured intentionally by others?

It will, unless expressly excepted.

264. What is the scope of a provision exempting the insurer from liability for injuries caused by fighting?

It is held that such a provision precludes recovery in case of fighting even where the insured is not the aggressor.

265. What is the scope of a provision exempting from liability if the injury or death occur in consequence of, or while the insured is engaged in, any unlawful act?

The right of the insured to recover is not defeated unless the death or injury is in some manner caused by such violation of the law, or unless the natural and reasonable consequences of the violation are to increase the risk.

266. In such case, must the law so violated be a criminal statute?

On this point the decisions, in different states, are directly in conflict.

267. What is the scope of an exemption from liability for injuries received by the insured while intoxicated?

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It is held that such a provision includes cases of injury received while intoxicated, even though the intoxication does not contribute to such injury.

268. Where a policy provides for the payment of a stated sum in case of total disability, how is this term construed?

Some of the decisions are inclined to construe the term "total disability" liberally in favor of the insured, others, strictly against him. Regard is had, however, to the language of the different policies and to the different occupations of the insured.

269. What is the presumption as to the intention of the parties to the insurance contract with regard to a provision already passed upon by the courts?

Where there has been rendered a uniform judicial construction by the courts of last resort of several states, the presumption is that the parties to the insurance contract adopted such construction.

270. What is the purpose of Employers' Liability Insurance?

To insure employers against liability or loss from actions brought against them by employees to recover damages for personal injuries caused by the negligence of the employers or their representatives.

271. How is such a contract of insurance viewed?

As valid, as constituting a contract of indemnity

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on the part of a third person in favor of the master; but a contract between the master and servant, exempting the master from liability for the results of his negligence, is held void as against public policy.

272. Where the policy designates the business in which the employees insured against are to be engaged, what is the rule of construction?

The provision as to the business will be liberally construed in favor of the insured employer.

273. May the insured employer maintain an action against the insurer before he has paid the claim of the employee?

This will depend upon the language of the policy. He may not if the insurance is against damages actually suffered; otherwise, where by the terms of the policy the employer is insured against liability for damages for injuries suffered by his employees.

274. In an action by the employer against the insurance company, how are questions already determined in a suit brought by the employee against such employer, regarded?

Ordinarily, such questions are *res judicata.*

275. What is the effect of a clause in an employer's liability policy requiring immediate notice to the company of an accident to the insured's employee?

This is regarded as a condition precedent to the

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company's liability, even though the policy contains no express forfeiture clause.

276. What is a contract of fidelity insurance?

That which insures against the fraud or dishonesty of the insured's employees.

277. What is the state of the law on this branch of insurance?

This form of insurance is very modern, so that there are, as yet, but few decisions on the subject. But it may be broadly stated that the general principles applicable to other branches of insurance, apply.

278. When, under a fidelity policy, must notice be given of the fraud or dishonesty of an employee?

It is usually provided in the policy that prompt notice must be given. The notice must be given within a reasonable time, and what constitutes reasonable time in a particular case may be a question for the jury.

279. How is the default of the employee to be proved so as to render the insurer liable?

The manner of proof is often a subject of provision in the policy, and where such provisions are complied with by the insured, so as to adduce the facts and statements provided for in the policy as the requisite proof, there is a *prima facie* case against the insurer.

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280. Does the general rule that the principal is bound by notice to his agent, apply so as to charge a bank with constructive notice of matters known to some of its officials while engaged in a design to rob the bank?

No; on the ground that the usual presumption of notification by an agent to his principal of that which it is his duty to communicate, does not arise where the agent acts otherwise than in execution of a duty or authority and to commit a fraud against the principal.

281. What duty of supervision over the employee does the insured owe the insurer under a fidelity policy?

He owes no such duty unless imposed by the insurance contract.

282. Where the applicant for a fidelity policy makes certain statements as to the kind of supervision exercised by him and the method of checking accounts, is the future observance of same vital to the contract?

No certain rule can be laid down, as there is some controversy on this point.

283. What is credit insurance?

That which insures merchants and traders against the insolvency or dishonesty of their cusomers.

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284. How are insurance contracts of this nature regarded?

They are very generally recognized as valid. In Massachusetts, however, they are held invalid because not authorized by the insurance laws.

285. Where a credit insurance policy insures against loss by insolvency of debtors owing for merchandise sold between designated dates, and provides that proofs of loss must be presented within a specified time after the expiration of the policy, and that no loss shall be paid until presented in such proofs, except in case of renewal of the policy, may the insured nevertheless recover for losses occuring after the expiration of the policy, and without renewal thereof on sales made during its continuance?

It has been so held, in accordance with the established rule that any ambiguity in an instrument is to be resolved against the draftsman, and that the time limit referred to the period of making the sales to be recovered on, and not to the time of the occurrence of losses thereon.

286. What is title insurance?

That which insures against loss by reason of defect in the title of real estate, or incumbrances, or liens.

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287. What is the condition of the law on this class of insurance?

There are but few cases construing insurance contracts of this description. The principles governing insurance in general would seem to apply.

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